

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

MEMORANDUM AND ORDER
04-CR-699 (DRH)(S-2)

RODNEY ARNOLDO MORRISON,

Defendant.

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A P P E A R A N C E S:

For the Government:

Benton J. Campbell
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Eastern District of New York
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Central Islip, New York 11722
By: James M. Miskiewicz, A.U.S.A.
John Joseph Durham, A.U.S.A.
Diane C. Leonardo-Beckman, A.U.S.A.

For Defendant:

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By: Richard Levitt, Esq.

HURLEY, Senior District Judge

The purpose of this Order is to obtain further input
from the government and supporting authority regarding its

position, as voiced during the January 29, 2010 sentencing proceeding, that it would be inappropriate for me to utilize Fed. R. Civ. P. 32(i)(3)(B) to forego a determination of the hotly disputed and factually problematic amount of tax loss attributable to racketeering acts ("RAs") 5 through 80 for guideline calculation purposes. In making the subject suggestion, I noted that the adjusted offense level of 34 for RAs 5 through 80 (PSR ¶ 82) was rendered essentially irrelevant given (1) my finding that the government had established under U.S.S.G. Guideline § 1B1.3 that RAs 3A, 3B, 3C, and 3D constitute relevant conduct under Count

2, thus producing a total offense after grouping of 47 (id., at ¶ 92), and (2) my indication that the amount of tax loss will not be considered by me directly or indirectly in determining the appropriate sentence.

On January 29, 2010, the defense supported the Court's suggestion as a reasonable alternative to unnecessarily prolonging the sentencing process. The government, however, voiced a contrary view. The Court has done some independent research in an effort to determine the validity of the government's position, thus far without success. Accordingly, the government is directed to file a letter brief in support of its position on or before February 5, 2010, to which the

defendant will have until February 10, 2010, to file such response as he deems appropriate.

SO ORDERED.

Dated: February 1, 2010
Central Islip, New York

_____/s/_____
DENIS R. HURLEY, U.S.D.J.